In the Supreme Court of the United States

OCTOBER TERM, 1969

No. ——

JOHN DWAIN DUGGER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND ON APPLICATION FOR RELEASE ON BOND PENDING DISPOSITION OF THE PETITION FOR A WRIT OF CERTIORARI

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Western District of Arkansas, petitioner and one Meyer were convicted on nine counts charging violation of the Dyer Act, 18 U.S.C. 2312, and one count of conspiracy. Petitioner was sentenced to ten years' imprisonment. The court of appeals affirmed, 396 F. 2d 279 (C.A. 8), and this Court denied certiorari, 393 U.S. 1017.

The present action arose by a motion under 28 U.S.C. 2255 to vacate sentence which the district court denied, on the files and records without a hearing, in

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an opinion relying on two previous rulings with respect to Meyer (Pet. App. A 1–11, 12–20).

The basic contention here—that the district court erred in failing to hold a hearing to determine whether any items seized pursuant to a search by warrant of the premises of co-defendant Meyer (while petitioner was not present) might have been beneficial to the defense—is patently insubstantial. This issue was fully canvassed and properly rejected on direct appeal (see 396 F. 2d 279, 283)[1] and was one of the issues raised in the certiorari petition which this Court denied in the 1968 Term (see No. 649). In these circumstances the denial of petitioner's motion without a hearing was amply justified.

Petitioner's reliance on cases such as *Kolod* v. *United States*, 390 U.S. 136, and *Alderman* v. *United States*, 394 U.S. 165, is wholly misconceived. Those cases dealt with evidence in the government's possession which had admittedly been seized in violation of the defendant's Fourth Amendment rights. Here, there was no violation of the Fourth Amendment rights of either defendant.[2]

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[1] The government furnished the defense (in response to a motion for a bill of particulars) with an FBI worksheet containing information about thirty-nine automobiles alleged to have been transported by petitioner and co-defendant Meyer, including those that were the subject of the indictment. As the court of appeals pointed out on the direct appeal, this "information amply sufficed to permit defendants to adequately prepare for trial * * *." 396 F. 2d at 283.

[2] The search and seizure, which petitioner in any event has no standing to challenge, *Alderman* v. *United States*, 394 U.S. 165, was sustained in a separate opinion of the court of appeals as to Meyer, on which we rely. *United States* v. *Meyer*, C.A. 8, No. 19,546, decided October 30, 1969. We are lodging a copy of that opinion with the Clerk of this Court.

The petition for a writ of certiorari and the application for release on bond pending disposition of the petition should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1970.

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